National Labor Relations Board Weekly Summary of NLRB Cases



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Asheville School, Inc. (11-CA-20447; 347 NLRB No. 84) Asheville, NC Aug. 8, 2006. The Board adopted the recommendations of the administrative law judge and held that the Respondent violated Section 8(a)(1) of the Act by promulgating and maintaining a prohibition upon discussion among employees of their wages. [HTML] [PDF]

In adopting the judge's finding that the Respondent's discharge of Charging Party Carolyn Kelley did not violate Section 8(a)(1), the Board found it unnecessary to pass on whether Kelley's conversations with other employees were concerted under Section 7. However, in agreement with the judge, it found that under the circumstances presented here, Kelley's disclosure of confidential wage and salary information was not protected. In balancing the Respondent's interest in confidentiality with Kelley's interest in disclosure, the Board noted that Kelley, as Respondent's payroll accountant, possessed special custody of wage and salary personnel records on the Respondent's behalf, that the Respondent treated the information in those records as confidential, and that Kelley was aware that her established job duties, which she breached, requested that she maintain the confidentiality of the information. See *Clinton Corn Processing Co.*, 253 NLRB 622, 623-625 (1980).

(Chairman Battista and Members Liebman and Kirsanow participated.)

Charge filed by Carolyn Kelley, an Individual; complaint alleged violation of Section 8(a)(1). Hearing at Asheville on May 16, 2005. Adm. Law Judge George Carson II issued his decision July 8, 2005.

Food & Commercial Workers Local 648 (Safeway, Inc.) (20-CB-11846-1; 347 NLRB No. 83) San Francisco, CA Aug. 7, 2006. The administrative law judge found, and the Board agreed, that the Respondent Union violated Section 8(b)(1)(A) and 8(b)(2) of the Act by causing Safeway, Inc. to discharge Cynthia Schaer on Oct. 11, 2002, without having informed her of her rights under NLRB v. General Motors Corp., 373 U.S. 734 (1963), and Communications Workers v. Beck, 487 U.S. 735 (1988), and without having provided her with a specific tabulation of the amount of dues and fees she owed and the method to calculate this amount, as required under Philadelphia Sheraton Corp., 136 NLRB 888 (1962), enfd. 320 F.2d 254 (3d Cir. 1963). [HTML] [PDF]

Chairman Battista and Member Schaumber reversed the judge's further findings that the Respondent earlier independently violated Section 8(b)(1)(A) by failing to inform Schaer of her *General Motors* and *Beck* rights when the Union presented her with membership documents on April 30, 2002. In the majority's view, to find these unalleged violations would raise serious due process concerns.

In his concurring opinion, Member Walsh wrote that while he agreed with his colleagues' reversal of the judge's finding that the Respondent earlier independently violated Section 8(b)(1)(A) by failing to inform Schaer of her *General Motors* and *Beck* rights when she applied for union membership, he found that it was unnecessary to pass on their rationale for

doing so. Rather, he would find, fundamentally and contrary to the judge, that Section 10(b) of the Act bars any allegations that the Respondent independently violated Section 8(b)(1)(A) by failing to inform Schaer of her rights.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Cynthia Schaer, an Individual; complaint alleged violation of Section 8(b)(1)(A) and (2). Hearing at San Francisco on June 3, 2003. Adm. Law Judge James M. Kennedy issued his decision Sept. 16, 2003.

In Re James Simpson (AD-50; 347 NLRB No. 85) Memphis, TN Aug. 9, 2006. The full Board approved the Formal Settlement Agreement entered into on July 6, 2005, by James Simpson (the Respondent) and the General Counsel and, on the basis of the Agreement, reprimanded Simpson because he engaged in the following misconduct:

- 1. On October 1, 2003, met with a group of Robilio employees and provided legal advice without having complied with applicable rules concerning disclosure of potential conflicts of interest;
- 2. On October 1 and/or 2, 2003, obtained signed statements from Robilio employees that they were subsequently submitted to the Board without adequate factual investigation; and
- 3. Procured and paid for the services of attorney Kirk Caraway, Simpson's former associate, to represent Robilio employees before the Board, without complying with applicable rules concerning the disclosure of a potential conflict of interest. [HTML] [PDF]

The Respondent is an attorney in private practice in Memphis and has at all times material to this matter appeared or practiced before the Board in that capacity. On January 16, 2004, pursuant to Section 102.177 of the Board's Rules and Regulations, the Regional Director served a report referring misconduct allegations to the General Counsel. The report involved, among others, the Respondent's alleged misconduct during his representation of the Victor L. Robilio Company, Inc., during an organizing campaign by Teamsters Local 1196 in 2003, as well as the Region's processing of Cases 26-CA-21243, 26-CA-21253, 26-CA-21282, 26-CA-21381, 26-CA-21399, 26-CA-21419, and 26-RC-8371, including the Region's petition for injunctive relief under Section 10(j) of the Act.

(Full Board participated.)

In Re Kirk Caraway (AD-51; 347 NLRB No. 86) Memphis, TN Aug. 9, 2006. The full Board approved the Formal Settlement Agreement entered into on July 6, 2005, by Kirk Caraway (the Respondent) and the General Counsel and, on the basis of the Agreement, reprimanded Caraway for the following misconduct:

- 1. On October 9, 2003, obtaining signed representation agreements from nine employees of Robilio after Robilio presented the employees with the representation agreements to sign;
- 2. Not meeting eight of his nine clients until October 21, 2003, despite having their signed representation agreements on October 9, 2003 and never meeting with his ninth client;
- 3. During the October 21, 2003 meeting, interrogating his clients regarding union representation matters, including asking whether they wished to be represented by the Union, in the presence of their employer, and
- 4. Prearranging and accepting payment for representation of his clients from the firm of Allen, Scruggs, Sosamon, Thompson, Simpson & Lillie, the firm representing Robilio in Cases 26-CA-21243, 26-CA-21253, 26-CA-21282, 26-CA-21381, 26-CA-21399, 26-CA-21419, and 26-RC-8731. [HTML] [PDF]

The Respondent is an attorney in private practice in Memphis and has at all times material to this matter appeared or practiced before the Board in that capacity. On January 16, 2004, pursuant to Section 102.177 of the Board's Rules and Regulations, the Regional Director served a report referring misconduct allegations to the General Counsel. The report involved, among others, the Respondent's alleged misconduct during his representation of the Victor L. Robilio Company, Inc., during an organizing campaign by Teamsters Local 1196 in 2003, as well as the Region's processing of Cases 26-CA-21243, et al., and 26-RC-8371, including the Region's petition for injunctive relief under Section 10(j) of the Act.

(Full Board participated.)

United States Postal Service (9-CA-42466; 347 NLRB No. 89) Columbus, OH Aug. 11, 2006. The Board adopted the administrative law judge's finding and held that the Respondent violated Section 8(a)(1) of the Act when Supervisor Dorothy Johnson refused to allow Postal Workers Local 232's representative Robert Gardner to speak during a *Weingarten* predisciplinary interview of employee Robert Bruff. [HTML] [PDF]

The Board rejected the Respondent's contention that the judge's finding is inconsistent with *St. Francis Hotel*, 260 NLRB 1259 (1982). In *St. Francis Hotel*, the Board found that the employer did not violate the Act by issuing a memorandum to supervisors giving examples of how to handle *Weingarten*-type meetings. The memorandum stated, in part, that "[t]he role of the shop steward is to observe and assist Mary Jane [a fictional employee] in responding to questions, however, the shop steward may not speak for her." The Board found that the Memorandum did not interfere with employees' Section 7 rights because the memorandum was

not distributed to employees, and was ambiguous in any event, as it could reasonably have been interpreted to mean only that the shop steward, in assisting the employees, could not prevent the employer from getting answers from the employee herself.

Here, in contrast, credited testimony established that Supervisor Johnson told both Bruff and Union Representative Gardner that Gardner was present to witness Bruff's predisciplinary interview and that he could not speak on Bruff's behalf. When Gardner questioned whether he could talk during the meeting, Johnson replied "no." Thus, the Board found that, unlike in *St. Francis Hotel*, there was nothing ambiguous about Johnson's statements to Bruff and Gardner. Those statements limited the union representative's role to that of an observer, and "[s]uch a limitation is inconsistent with the Supreme Court's recognition that a union representative is present to assist the employee being interviewed." *Barnard College*, 340 NLRB 934, 935 (2003). Therefore, the Board found that *St. Francis Hotel* is distinguishable from the instant case.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Postal Workers Local 232; complaint alleged violation of Section 8(a)(1). Hearing at Columbus on March 14, 2006. Adm. Law Judge Keltner W. Locke issued his decision April 20, 2006.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Inter-Disciplinary Advantage, Inc. (Auto Workers) Midland, MI Aug. 8, 2006. 7-CA-48706; JD-54-06, Judge George Alemán.

Legal Services of Northern California (Legal Services UAW Local 2320) Sacramento, CA Aug. 7, 2006. 20-CA-32863; JD(SF)-40-06, Judge James M. Kennedy.

Eastern Energy Services, LLC (Sheet Metal Workers Local 40) Norwich, CT Aug. 9, 2006. 34-CA-11315; JD(ATL)-31-06, Judge Lawrence W. Cullen.

Ford Motor Co. (Auto Workers Local 1970, Unit 4) Dearborn, MI Aug. 11, 2006. 7-CA-48767, 48826; JD-57-06, Judge Bruce D. Rosenstein.

Sunoco, Inc. (R&M), a wholly Owned Subsidiary of Sunoco, Inc. (Atlantic Independent Union) Tonawanda, NY Aug. 11, 2006. 3-CA-25293, 25654; JD-59-06, Judge Arthur J. Amchan.

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Vanguard Car Rental, USA Inc. d/b/a Alamo Rent-A-Car, Philadelphia PA and Wilmington, DE, 4-RC-21115, Aug. 8, 2006 (Members Liebman, Schaumber, and Kirsanow)

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Metro Health Tech Services, Inc., Largo, MD, 5-RC-15988, Aug. 7, 2006 (Members Liebman, Schaumber, and Kirsanow)

(In the following cases, the Board granted requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Duce Construction Corp., f/k/a Duce Contracting, Inc., New York, NY, 2-RM-2109, Aug. 8, 2006 (Chairman Battista and Member Schaumber; Member Liebman dissenting) [remanding to Regional Director]

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Southern Bakeries, LLC, Hope, AR, 26-RM-469, Aug. 9, 2006 (Members Liebman, Schaumber, and Kirsanow)
